In the Supreme Court of the United States.

OCTOBER TERM, 1916.

JOHN LONDON, WALTER S. FIELD, Madison M. Lindly, and Katie A. Howe, executrix, intervenors, appellants,
v.
JACK AMOS AND OTHERS, KNOWN as the Mississippi Choctaws.

Nos. 926, 927, 930.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEES IN OPPOSITION TO APPELLANTS' MOTION FOR WRIT OF CERTIORARI.

Appellants move for a writ of certiorari requiring the Court of Claims to certify as part of the record:

1. Tentative findings of fact and opinion of the court filed December 7, 1914.

2. Objections and exceptions of Walter S. Field and Madison M. Lindly, filed January 21, 1915, to said tentative findings of fact and opinion filed December 7, 1914.

3. Finding XLII relating to the claims of Walter S. Field and Madison M. Lindly, and Finding XLV relating to the claims of John London and others, and

the conclusion of law filed by the Court of Claims May 17, 1915.

4. Exceptions of Walter S. Field and Madison M. Lindly filed August 16, 1915, to the findings of fact and conclusion of law and opinion filed by said court May 17, 1915, with correction of clerical error in said exceptions as set forth November 29, 1915.

5. Bill of exceptions on behalf of Walter S. Field and Madison M. Lindly filed August 16, 1915.

6. Certain statement of errors of fact and argument as to errors of law contained in a motion for a new trial filed on behalf of Walter S. Field on November 28, 1916.

7. The names of the different judges constituting the Court of Claims who sat at hearings in February, 1915, February, 1916, and November 26, 1916.

Appellees submit that the motion should be disallowed for the reasons:

1. That the Court of Claims is required to certify as part of the record here only its ultimate findings of fact, and not tentative or incomplete findings of fact.

2. That every fact material to the final disposition of these cases has been heretofore acted upon by the Court of Claims, and their action thereon is fully disclosed by the record as it now stands.

STATEMENT.

Suit was filed by the estate of Charles F. Winton, deceased, and others *v.* Jack Amos and others, known as the Mississippi Choctaws, in the Court of Claims

on October 11, 1906, under a special act of Congress approved April 26, 1906, 34 Stat. 140, which gave said court jurisdiction to adjudicate the claims of the estate of Charles F. Winton, deceased, his associates and assigns, against the Mississippi Choctaws for services rendered and expenses incurred in the matter of their claims to citizenship in the Choctaw Nation upon the principle of *quantum meruit*.

The act of April 26, 1906, was amended by the act of May 29, 1908, 35 Stat. 457, giving the Court of Claims jurisdiction to adjudicate the claims of William N. Vernon, J. S. Bounds, and Chester Howe, and their associates or assigns, against the Mississippi Choctaws for services rendered and expenses incurred in the matter of the claims of the Mississippi Choctaws to citizenship in the Choctaw Nation upon the principle of *quantum meruit*. It further provided that "The said William N. Vernon, J. S. Bounds, and Chester Howe are hereby authorized to intervene in the suit instituted in said court under the provisions of section 9 of the act of April 26, 1906, in behalf of the estate of Charles F. Winton, deceased."

Under the jurisdictional act, as amended, Vernon, Bounds, and Howe filed intervening suits, and the material facts in the claim of Howe were found by the court in its ultimate Finding of Fact No. XXXIII. (Findings of May 29, 1916, p. 19.)

Thereafter, at different dates, intervening suits were filed in said court under the amended jurisdictional act by Madison M. Lindly, Walter S. Field,

and John London, claiming the right to intervene as associates of Chester Howe.

Prior to the first hearing of the Winton case in the Court of Claims plaintiffs Lindly and Field, on June 13, 1913, requested said court to find, as part of their findings of fact, an alleged contract of association in writing between the said Howe, Lindly, and Field to prosecute the claims of Mississippi Choctaws to citizenship in the Choctaw Nation; an alleged express contract of employment by three bands of Mississippi Choctaws, claimed to have been in writing, but subsequently lost; certain contracts made with individual Mississippi Choctaws by James E. Arnold and Louis P. Hudson as employees of said Howe, Lindly, and Field; and certain alleged services rendered, in pursuance of said contracts, to the Mississippi Choctaws in securing legislation by which they obtained their rights as citizens of the Choctaw Nation.

The court refused in its tentative findings of fact of December 7, 1914, its intermediate findings of fact of May 17, 1915, and its ultimate findings of fact of May 29, 1916, to find the foregoing facts, upon the ground that they were not sustained to the satisfaction of the court by the evidence.

Plaintiffs Lindly and Field filed exceptions and objections, a bill of exceptions, and a motion for a new trial on January 21, 1915, August 16, 1915, and November 26, 1916, respectively, to the refusal of the court to find the facts requested.

On May 29, 1916, the court found the ultimate facts in the claims of Arnold and Hudson (Finding No. XXXIX).

The objections and exceptions filed by Plaintiffs Lindly and Field on January 21, 1915, August 16, 1915, and bill of exceptions filed August 16, 1915, and motion for new trial filed by Field November 26, 1916, requested for certification as part of the record here, were all directed to the refusal of the Court of Claims (Finding XLII, p. 30) to find the facts as requested by the said plaintiffs prior to the first hearing of the Winton case.

ARGUMENT.

An inspection of ultimate Finding No. XLII of the Court of Claims will show conclusively that every material fact requested by appellants was considered and acted upon by the court.

There is no rule of this court which requires or permits the Court of Claims to certify to this court as part of a record tentative or incomplete findings of fact, such as these were, or objections and exceptions to the court's findings of fact, or arguments either of fact or law upon motions for new trials. The Court of Claims is only required to certify, as part of the record, its ultimate finding of fact and conclusion of law after all motions for new trials and amendments of findings of fact have been disposed of.

This court has frequently declared that it will not go behind the findings of fact of the Court of Claims (*Sisseton and Wahpeton Indians*, 108 U. S. 561, 566),

but if that court has failed to pass upon any specific facts requested to be found, material to the decision of the case, this court, on proper motion before trial, may direct that court to determine whether or not such facts are sustained by the evidence. (*United States* v. *Adams*, 9 Wall. 661; *United States* v. *Driscoll*, 131 U. S. Appendix clix.; *Ripley* v. *United States*, 220 U. S. 491; *id.*, 222 U. S. 141.)

Not one material fact has been pointed out by appellants for certification, or can be pointed out, which the Court of Claims has not passed upon in its ultimate finding of fact. It would not assist the court or help appellants if all of the voluminous matters specified in the motion were certified as requested, but would tend to burden and confuse the record.

It may well be doubted whether the Court of Claims, after having found that no association existed between appellants and Chester Howe, was required to make any further findings of fact. Such additional facts would be necessarily immaterial. Indeed, the amendatory act of May 29, 1908, *supra*, under the rule laid down in *Robertson* v. *Gordon et al.*, 226 U. S. 311, 317, should limit intervention in the Winton suit to Vernon, Bounds, and Howe named in the act.

The request that this court require the Court of Claims to certify as part of the record the names of the different judges who sat at the several hearings of the Winton case is clearly improper. The validity

of the ultimate findings of fact of the Court of Claims is not affected by any change in the personnel of that court during the progress of a suit. The request, we believe, carries an insinuation which should be its own answer.

JOHN W. DAVIS,
Solicitor General.
HUSTON THOMPSON,
Assistant Attorney General.

APRIL, 1917.